UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

A-0060

CRYSTAL OIL COMPANY, AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY,	§	Civil Action No. CV 95-2115S
Plaintiffs	§	JUDGE TOM STAGG
v.	§	MAGISTRATE JUDGE PAYNE
ATLANTIC RICHFIELD COMPANY,	§	
Defendant	§	

REPLY MEMORANDUM IN SUPPORT OF CRYSTAL'S MOTION TO REFER BANKRUPTCY DISCHARGE ISSUE TO THE BANKRUPTCY COURT

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June 7, 1996

MAY IT PLEASE THE COURT:

Plaintiff Crystal Oil Company ("Crystal") files this reply memorandum in support of its motion requesting that this Court refer to the Bankruptcy Court pursuant to 28 U.S.C. § 157(a) and Uniform Louisiana Local Rule 22.01W the issue of whether ARCO is violating § 524 of the Bankruptcy Code by asserting a CERCLA claim against Crystal that was discharged in Crystal's 1986 Bankruptcy Case and related issues (the "ARCO Bankruptcy Discharge Issue" as it was defined in Crystal's original memorandum).

Introduction

ARCO once again conjures up the specter of a complicated CERCLA case being prosecuted in this Court as a scare tactic. Before any court anywhere should entertain such a potentially complicated CERCLA case against Crystal, there is a clearly separable, triable issue that should be heard first -- was Crystal Oil Company discharged in its 1986 bankruptcy reorganization from any potential claim by ARCO concerning the Colorado mine site?

Since it is clear that ARCO had notice of, and even participated in, the Crystal bankruptcy proceeding, the resolution of this threshold bankruptcy issue will depend on ARCO's knowledge about the environmental problems at the mine site prior to the October 31, 1986 Bar Date in Crystal's Bankruptcy Case. This Court does not need to try the CERCLA case (and Crystal should not be required to bear the burden of defending that case) to decide under the Bankruptcy Code whether ARCO had a "claim" that was "discharged." Section 524 provides Crystal the right to a threshold determination whether a claim is discharged before it is put to the expense of defending that claim.

Even though discovery has only begun, in the first three boxes of ARCO's documents, Crystal has found numerous documents sufficient to support a finding that ARCO violated § 524 of the Bankruptcy Code when it asserted a counterclaim against Crystal for cleanup of the

Colorado mine. Highlighted excerpts from selected documents, attached in an Appendix hereto as Tabs A-D, show without doubt that ARCO not only knew of the environmental issues concerning the Rico mine site before the Bar Date in Crystal's Bankruptcy Case, but ARCO also knew of serious environmental problems at the Colorado mine site prior to and in conjunction with its very purchase of this mine in 1980. ARCO internally evaluated this risk, and still signed a contract to purchase the mine in which it agreed to be responsible for that risk. *Id.*

Crystal is entitled to have the Bankruptcy Court enforce the § 524 injunction to stop ARCO from oppressing Crystal with what ARCO almost brags is "protracted" burdensome CERCLA litigation concerning the RICO mine. ARCO's briefs repeatedly threaten Crystal and this Court with this burden, apparently in hopes of either intimidating Crystal into a settlement or scaring this Court into transferring ARCO's claimed burdensome CERCLA case away to Colorado.

The § 524 Bankruptcy Discharge Issue Is An
Inherently Severable And Separate "Proceeding"
Which Should Be Heard By The Bankruptcy Court Prior
To The Court's Addressing The Underlying CERCLA Action.

Contrary to ARCO's assertion (ARCO's memorandum in opposition at 10), this Court has the power and authority under 28 U.S.C. § 157(a) to refer the ARCO Bankruptcy Discharge Issue to the Bankruptcy Court. That action is a distinct "proceeding" under § 157(a), and therefore can, and should, be separated from the CERCLA counterclaim asserted by ARCO, and determined first, as a threshold matter.

ARCO does not dispute that the ARCO Bankruptcy Discharge Issue "arise[s] under Title 11" and "arise[s] in or [is] related to a bankruptcy case." *See* Plaintiff's Memorandum at 3-6; 28 U.S.C.§ 157(a) (1994). Further, the only case cited by ARCO for its erroneous assertion that § 157(a) precludes referral, actually supports Crystal's position that the ARCO Bankruptcy Discharge Issue is a "proceeding" subject to referral. ARCO's memorandum in

opposition at 10 (citing *In Re S.E. Hornsby & Sons Sand and Gravel Co.*, 45 B.R. 988, 994 (Bankruptcy M.D. La. 1985) ("As used in § 157(a) everything that occurs in a bankruptcy case is a proceeding. Thus, proceeding here is used in its broadest sense")).[1/]

ARCO's argument that the Bankruptcy Discharge Issue is so intertwined with ARCO's CERCLA counterclaim that it cannot be "split" (ARCO memorandum at 4) is without merit and runs counter to the purpose and policy underlying § 524 of the Bankruptcy Code which provides "an injunction against commencement or continuation of an action . . . to collect . . . any such [discharged] debt. . . ." The injunction created by § 524, by its nature, protects debtors from the time and expense of a trial on the merits of a "claim" that should never have been brought in the first place because it was discharged.

ARCO seeks to circumvent the threshold determination required by § 524 by arguing that it is not possible to know whether a specific CERCLA claim was discharged without trying its CERCLA claim. ARCO thus argues for an extremely narrow definition of claim. This is completely at odds with the Bankruptcy Code which mandates that "claim" be given its "broadest possible definition," to carry out the fresh start policy of the Bankruptcy Code. *House Report No. 95-595, 95th Cong., 1st Sess. 309 (1977); Senate Report No. 95-989, 95th Cong., 2d Sess. 21. (1978)*; *Ohio v. Kovacs*, 469 U.S. 274, 279 (1985).

The Circuit Courts of Appeals have relied on this broad definition of claim to develop standards for this threshold determination whether an environmental claim has been discharged. These standards require review of certain fairly easily determinable facts that do not come anywhere close to requiring a trial of the entire underlying environmental claim. A review of

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1/ *See also In Re Wolverine Radio Co.*, 930 F.2d 1132, 1141 (6th Cir. 1991) ("The use of the term 'proceeding' . . . . is not intended to confine the bankruptcy case. Very often issues will arise after the case is closed . . . . The bankruptcy courts will be able to hear [proceedings such as motions to enforce the order confirming the plan] because they arise under Title 11"), *cert. dismissed*, 503 U.S. 978 (1992); *In Re Brantley*, 116 B.R. 443, 446 (Bankr. D. Md. 1990) (bankruptcy court was referred claim for violating the discharge injunction of 11 U.S.C.§ 524(a)).

these cases illustrates how broadly courts interpret the concept of "claim" in circumstances even less compelling than here where specific, and potentially sizable environmental issues abounded at Rico for years prior to Crystal's bankruptcy proceeding.

For example, in *In re Chateaugay Corp.*, 944 F.2d 997, 1005 (2nd Cir. 1991), the Second Circuit held that environmental regulators have (1) claims for certain costs they do not yet know relating to known claims and (2) even claims concerning certain sites they do not yet know about. According to the court, a contingent claim "must result from pre-petition conduct fairly giving rise to a contingent claim." This standard is met, however, where a claim by the environmental authorities is based on "pre-petition releases or threatened releases of hazardous substances." *Id.* at 997. Thus, the environmental authorities have a contingent claim when a bankruptcy debtor has something on its premises which "threatens" harm to the environment in the future, even if the harm has not yet occurred.

Similarly, in *Matter of Chicago, Milwaukee, St. Paul & Pacific R.*, 3 F.3d 200 (7th Cir. 1993), the Seventh Circuit held that a claim had been discharged, even though a private creditor claimed it did not know about the claim, but the circumstances showed it should have known. The court placed heavy emphasis on the knowledge of a potential claim that should have been conveyed from the nature of the site based on its prior use and the position of the site versus other known environmental problems, noting that "[o]ur national environmental policy does not permit a commercial landowner in a tainted area to put on blinders or attempt an 'ostrich defense.'" *Id.* at 207. Moreover, the Seventh Circuit said:

> It is not too much to require a timely examination under any circumstances, but where a present owner expects reimbursement from a predecessor in interest, any delay may preclude relief, because of . . . the interposition of dates barring claims imposed by bankruptcy courts. *Id.*

The *In re Jensen*, 995 F.2d 925, 931 (9th Cir. 1993) court held that the state regulatory authority should have "fairly contemplated" a claim when its personnel observed a vat of

fungicide on the closed-down debtor's premises, which could cause pollution if it "were to be broken [in the future] through accident or vandalism." Echoing the concept established in *Chateaugay*, the Ninth Circuit held that an environmental authority has a fair enough contemplation that it has a claim if there are circumstances which suggest there might be environmental damage in the future "if," for example, an "accident or vandalism," occurs. *Id.*

Finally, the *In re Texaco, Inc.*, 182 B.R. 937 (Bankr. S.D.N.Y. 1995) court, following *Chateaugay* and *Jensen*, held that an environmental damage claim asserted by a private creditor was discharged in the debtor's bankruptcy, even though the creditor did not know about it during the bankruptcy case, as long as it was discoverable at that time.

The principles developed in these cases do not even come close to requiring a trial of a complicated CERCLA case just to determine if the CERCLA claim being asserted was discharged in bankruptcy. Clearly, the Bankruptcy Court in this case can determine if ARCO's counterclaim asserts a "claim" that was discharged without having to engage in the specter of a complicated CERCLA proceeding concerning the Colorado mine.

The § 524 Bankruptcy Discharge Issue Does Not
Require Substantial Consideration Of CERCLA So As To
Require Withdrawal Of Reference To The Bankruptcy Court.

ARCO erroneously argues in part III of its memorandum in opposition that the District Court is compelled to retain the Bankruptcy Discharge Issue because the terms of 28 U.S.C. § 157(d) would require the withdrawal from the bankruptcy court of any proceeding requiring a decision concerning "the uncertain interface of the bankruptcy law and CERCLA."

In *In re Chateaugay Corp.*, 944 F.2d 997, 1002 (2nd Cir. 1991), however, the Second Circuit held that accrual of the EPA's CERCLA claims against a debtor is determined by bankruptcy law, and does not require interpretation of the substantive provisions of CERCLA. The court reasoned that Congress intended the Bankruptcy Code "to overcome many provisions

of law that would apply in the absence of bankruptcy," and that if Congress had intended CERCLA to limit the Bankruptcy Code, it would have amended the Code to achieve environmental objectives. *Id.*

Relying on the Second Circuit's decision in *Chateaugay*, the court in *LTV Steel Co., Inc. v. Union Carbide Corp.*, 193 B.R. 669, 673 (S.D.N.Y. 1996) held that CERCLA claims asserted in circumstances similar to those envisioned by ARCO did not require mandatory withdrawal under § 157(d). In that case, a former bankruptcy debtor, LTV Steel, sued under § 524 in bankruptcy court in New York to stop the plaintiffs in a federal district court lawsuit in Pennsylvania from asserting CERCLA liability against LTV that had been discharged in LTV's bankruptcy case. *Id.* at 671. Four of the CERCLA claimants moved pursuant to § 157(d) to withdraw reference of this bankruptcy discharge issue from the bankruptcy court. *Id.* at 671-72.

The court in *LTV Steel* first noted that § 157(d), concerning mandatory withdrawal, must be interpreted narrowly so that it does not become an "escape hatch" through which most bankruptcy matters might fall. *Id.* at 673. The court then noted that the "ultimate issue in the adversary proceeding here is whether LTV's potential CERCLA liability to the defendants has been discharged by its bankruptcy." *Id.* Relying on *Chateaugay*, the court held that withdrawal of reference was not warranted because this discharge issue was fundamentally a bankruptcy issue,[2/] indeed, it was a core proceeding not subject to discretionary withdrawal, and efficiency

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[2/] "After the court that hears this case determines when defendants' claims accrued, it must then determine whether those claims were discharged, a fundamental question of bankruptcy law that is best resolved by a bankruptcy court." *LTV Steel*, 193 B.R. at 674.

and uniformity would be promoted by denial of the motion to withdraw the reference. *Id.* at 673-74.[3/]

Reference Of The Bankruptcy Discharge Issue
To The Bankruptcy Court Promotes Judicial Economy.

It will promote the greatest judicial economy if the Bankruptcy Court determines in a single proceeding the applicable legal principles governing whether the State of Louisiana and ARCO are violating § 524 of the Bankruptcy Code when they assert their three environmental claims. It will further promote judicial economy if the Bankruptcy Court then applies those legal principles and standards consistently to the facts of the two State of Louisiana cases and the ARCO case. Moreover, if one court develops these legal principles and applies them to the material facts in all three of these cases, the results are more likely to be consistent, thus promoting the equal treatment of creditors and stockholders who substantially changed their financial positions when they voted to accept Crystal's reorganization plan in reliance on the Bar Order.

ARCO misses the point when it argues that there are fact issues involved in the threshold Bankruptcy Discharge Issue which may also be relevant to ARCO's CERCLA claim against Crystal and CEPCO. ARCO, in essence, suggests that it would promote judicial efficiency if both of these issues were decided at once. This simply ignores that § 524 entitles a debtor to have a threshold determination of whether claims being asserted against it have been discharged, without having to undertake the enormous and expensive burden of trying a purported underlying claim. *See supra.* Moreover, it ignores the fact that what is most significant to judicial

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[3/] While there had been other district court decisions to the contrary prior to the Second Circuit's decision in *Chateaugay*, the district court in *LTV Steel* noted that the only district court to address a motion to withdraw a reference in a case concerning the discharge of CERCLA liability had denied the motion. 193 B.R. at 674 (citing *Revere Copper & Brass, Inc. v. Achushnet Co.*, 172 B.R. 192, 196-98 (S.D.N.Y. 1994)). That court followed *Chateaugay*, and reasoned that because determination of the accrual of a CERCLA claim is based exclusively on the Bankruptcy Code, this does not involve substantial and material non-Code issues, and therefore withdrawal is not mandatory.

economy here is development of consistent bankruptcy principles (to determine under the Bankruptcy Code what is a claim, whether it has been discharged and whether a party is enjoined from pursuing it), not the trial of cases under CERCLA, when the distinct possibility exists that these CERCLA cases may be void because the plaintiff is enjoined from bringing them.

Crystal's bankruptcy case has already been reopened in connection with the two State of Louisiana claims, and the Bankruptcy Court will address § 524 bankruptcy discharge issues in those two cases, regardless of whether it also considers the ARCO Bankruptcy Discharge Issue. The same court should decide all three of these bankruptcy discharge issues. The legal issues and the background facts concerning Crystal's bankruptcy case and orders entered during it will be identical.

Crystal Is Not Estopped From Requesting That This Court
Refer the Bankruptcy Discharge Issue To The Bankruptcy Court.

ARCO incorrectly claims that Crystal is estopped from asking the District Court to refer the Bankruptcy Discharge Issue to the Bankruptcy Court because Crystal asserted this issue, along with the CEPCO contract release issue, in its Complaint. As Crystal has previously stated in briefs filed with this Court, Crystal was certain that this Court had jurisdiction over both the ARCO Bankruptcy Discharge Issue (as to Crystal) and the Contract Release Issue (as to CEPCO, not a debtor in Crystal's 1986 bankruptcy), both threshold issues which will release Crystal and CEPCO from the burden of defending a discharged and released CERCLA claim.[4/]

[4/] The facts that Crystal will prove in support of the ARCO Bankruptcy Discharge Issue (*i.e.* that ARCO knew of the serious environmental problems at the Rico mine not only before the October 31, 1986 Bar Date in Crystal's bankruptcy case, but also before ARCO even bought the property, Appendix Tabs A-D) will, of course, also provide parole evidence, if such evidence is to be admitted, that ARCO knew what it was doing when it signed a contract with CEPCO to buy the RICO mine, in which it agreed to be responsible for all environmental problems there (except for $35,000 in a specific problem that was singled out in the contract).

Because CEPCO was not a party to the 1986 bankruptcy case (although a wholly-owned subsidiary of Crystal at the time), plaintiffs have made no motion for this Court to refer the CEPCO Contract Release Issue to the Bankruptcy Court. It would, of course, be appropriate, and within the power of the District Court, to refer such

When Crystal filed its Complaint, it thought it quite likely that this Court would ultimately refer the ARCO Bankruptcy Discharge Issue to the Bankruptcy Court under Local Rule 22.01W. Every brief that Crystal has written in response to ARCO's venue transfer motion has mentioned this Court's power to refer the Bankruptcy Discharge Issue to the Bankruptcy Court. After Crystal received two additional complaints from the State of Louisiana alleging other environmental claims that had also been discharged, Crystal reopened its bankruptcy case and asked the Bankruptcy Court to find that the State had asserted those claims in violation of § 524. In these two state claims, there are no related release or contractual assumption of liability issues concerning a non-debtor party, as with CEPCO here. Having brought the Louisiana claims before the Bankruptcy Court, Crystal then believed it appropriate to make a formal motion to this Court requesting referral of the ARCO Bankruptcy Discharge Issue to the Bankruptcy Court, since the prospect for unnecessary duplication in the judicial process was then apparent.

Crystal's conduct in this case does not create any waiver or estoppel.[5/] Indeed, at every step along the way, Crystal has believed and asserted that this Court could, and should, refer the Bankruptcy Discharge Issue to the Bankruptcy Court for determination.

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a related issue to the Bankruptcy Court since the evidence which is considered on the ARCO Bankruptcy Discharge Issue will also be probative on the CEPCO Contract Release Issue. 28 U.S.C. § 157(a); *See, e.g., In re Dow Corning Corp.*, ___ F.3d ___, 1996 WL 288212 *4-*9 (6th Cir. Apr. 9, 1996). Obviously, whether a large claim exists against a wholly-owned subsidiary of a debtor is "related" to and affects the debtor and creditors who voted in the Bankruptcy Case to transform their claims into stock of the debtor. The Bankruptcy Court has jurisdiction to hear such a claim, especially when (1) the material facts of the ARCO Bankruptcy Discharge Issue are so similar to the material facts of the Contract Release Issue (if parol evidence is permitted on that issue) and (2) both the ARCO Bankruptcy Discharge Issue (as to Crystal) and the Contract Release Issue (as to CEPCO) are threshold issues which should be decided before pursuing ARCO's CERCLA counterclaim. Indeed, as described above, § 524 of the Bankruptcy Code requires that the ARCO Bankruptcy Discharge Issue be decided at the threshold.

5/ The case ARCO cites in support of its notion that Crystal is estopped from urging referral, does not support its position. *See* ARCO's memorandum at 7 (citing *In re Braniff International Airlines*, 159 B.R. 117 (E.D. N.Y. 1993). The *Braniff International Airlines* case, unlike the present case, was not an action brought to enforce a bankruptcy injunction. Instead, in that case the debtor asserted contract claims against the defendant aviation company to enforce certain lease agreements in district court, during the pendency of its Chapter 11 case in bankruptcy court, instead of asserting the contract action as an adversary proceeding in the bankruptcy court.

This Court Should Defer Consideration
Of ARCO'S Motion To Transfer Venue Until
The § 524 Bankruptcy Discharge Issue Has Been Resolved.

Unless ARCO prevails on the Bankruptcy Discharge Issue, it is enjoined from pursuing its CERCLA counterclaim against Crystal. Therefore, instead of deferring consideration of Crystal's motion to refer the ARCO Bankruptcy Discharge Issue to the Bankruptcy Court until after a ruling on ARCO's motion to transfer venue, as ARCO suggests at 1, this Court should grant Crystal's motion to refer as a foundation for denying ARCO's venue motion.

Conclusion

Accordingly, the Court should refer the threshold ARCO Bankruptcy Discharge Issue to the Bankruptcy Court.

RESPECTFULLY SUBMITTED,

FULBRIGHT & JAWORSKI L.L.P.

By: Zack A. Clement by Edward Clark Lewis (with permission)

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ATTORNEYS FOR PLAINTIFFS,
CRYSTAL OIL COMPANY AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that in compliance with the Federal Rules of Civil Procedure, on this 7th day of June, 1996, a copy of the above and foregoing has been served on counsel for Defendant, Atlantic Richfield Company, by placing a copy of same in the United States mail, properly addressed and with adequate postage affixed thereon to:

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
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CRYSTAL OIL COMPANY, AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY,	§	Civil Action No. CV 95-2115S
Plaintiffs	§	JUDGE TOM STAGG
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APPENDIX OF EXHIBITS IN SUPPORT OF CRYSTAL'S MOTION TO REFER BANKRUPTCY DISCHARGE ISSUE TO THE BANKRUPTCY COURT

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liabilities is summarized and evaluated in memoranda in Appendix III. CDM concludes that $16 million of curative work is needed to remove the environmental liabilities and the HS&E Department concurs with the CDM conclusions. DME contends that the cost of this work will likely be substantially less with focused innovative solutions to the problems. The three areas of major concern are:

(1) the tailings ponds which lie near the Dolores River
(2) the zinc-rich water that drains from the St. Louis tunnel into three ponds
(3) the tailings ponds located adjacent to Silver Creek near the Argentine Shaft

The probability weighted cost of all environmental solutions is $15.4 million. . .

Possible barriers to development [include p]rohibitive cost in maintaining environmental integrity. . .

The second area of concern is the $15.4 million cost estimate for environmental rehabilitation. . . . the liability represents the most significant exposure should the project fail to meet molybdenum expectations. If Anaconda were to purchase now. . . the exposure would be $15.4 million, with a continuing caretaking cost of $200,000 per year. . .

Appendix III -- Environmental Liabilities at Rico

My basic conclusion is that the environmental liabilities at Rico have not been overstated by the CDM report and the recommended contract activities will require about $16,000,000 in cost over the initial years of Anaconda ownership. The Rico existing environmental liabilities are shown

[below] . . . Anaconda will assume responsibility for all the liabilities listed above, if we purchase.

H, S, & E conclusions and recommendations are . . . Recognize that environmental liabilities are just that -- liabilities . . .

H, S, & E has reexamined the Rico environmental problems to determine if there are alternatives to the CDM Report and its recommended $16,000,000 solution. . . Permanent liability is a fact of life; permanent solutions must be found . . .

The capital cost involved with correcting existing unsatisfactory environmental conditions at Rico is approximately $16,000,000.

TAB C December 9, 1983, Notice of Claim Against Anaconda Minerals Company and Atlantic Richfield Company for Costs and Damages Pursuant to 42 U.S.C. 9612

This claim is made pursuant to Section 112 of the Comprehensive Environmental Response, Compensation and Liability Act. . . said facility being the Rico Argentine Mine, Mill and Tailings Pile located in Rico, Colorado. . . There have been releases of hazardous substances from said facility into the following natural resources. . .

TAB D September 17, 1984, Letter to Anaconda Minerals Company from Ecology and Environment, Inc.

Ecology and Environment, Inc. [is] under contract with the U.S. Environmental Protection Agency (EPA) to investigate sites which may qualify under CERCLA for remedial investigation . . . Our assignment is to assess the possible impact that the mines in the district may have on the Dolores River. In particular, EPA has requested that we focus our initial investigation on the Rico-Argentine mining site.

Project title: Rico Project

Buyout of Crystal Oil's Assets

Project location (county/state): Dolores County, Colorado

Starting date: June 1, 1980 | Completion date: 1987

AFE type | Date approval requested: June 2, 1980 | AFE number: DEN 80-005

Originated (dept./group) by: DME - Southwest District | Date: May 28, 1980

☒ Original AFE $ 22.4 million

☐ Revision no. $

☐ Revised total $

Accounting

Cost center code(s)

Date received by controller: May 28, 1980

Project code

Line item

Budget item code(s)

Project identifier number: DEN 80-005

Authorized approvers table number: Schedule 3 Item 16

Procedural audit — date: May 28, 1980

Budget audit — date: May 28, 1980

Financial and Economic Indicators $ IN MILLIONS BEFORE TAX

Year	Effect on P&L
Current year	0
19 81	0
19 82	0
19 83	0

DCFROR 22 %

Present worth 130

Payout 3 yrs.

Investment efficiency +1.0

Budget $ IN MILLIONS

$ Current year

☐ Budgeted

Action

XX Substitution 7.5

Total $7.5

$ Next year 3.9

$ Beyond next year 11.0

Description and summary of justification	Account codes	Amounts - in whole dollars only MILLI			
		On-hand	Capital	Expense	Total
Purchase Crystal Oil's Assets - Rico	DEN 80-005		5.0		5.0
Environmental Assessment of Liabilities and Repair Where Necessary, 1980 thru. 1987			15.4		15.4
Exploration				2.0	2.0

Operator: ANACONDA COPPER COMPANY

OWNERSHIP DECIMAL 1.0000000

Gross totals: ANACONDA COPPER COMPANY SHARE | 20.4 | 2.0 | 22.4

Endorsements

☐ Engineering — Date 5/29/80

☐ Expl. & Geology — Date 5/27/80

☐ Operations — Date

☐ Planning and Control — Date 5/28/80

☐ Expl. & Acquisitions — Date 5/29/80

☐ Other — Date

Approvals

☐ Company/Division — Date 6-2-80

☐ Executive Vice President — Date 6/2/80

☐ Vice Chairman — Date 6/3/80

☒ President — Date 6/7/80

☐ Board of Directors (approval in minutes) — Date

RCT 000017848

AFE 80 B Front

12-0

The Rico Molybdenum Exploration Project is located in the Rico silver mining district in Southwestern Colorado. The project is in the second year of a three year Option to Purchase Agreement from Crystal Oil Company on 3,040 acres that cover 90% of the district. That option must be exercised before December, 1981, and the price is either $5 million or $2 million with 7½% royalty at seller's choice. Until June 25, however, Crystal offers to sell this property and an additional 1,090 acres of timber rights, 370 acres of town lots and tracts and other assets for $5 million with no retained royalty. Anaconda Copper Company requests sufficient funds to purchase Crystal's assets at Rico ($5.0 million) and accomplish environmental curative work ($15.4 million).

Anaconda began exploration at Rico in 1978, following up on a copper-silver resource found by Crystal. Potential for a 30 million ton deposit with 2% copper, 1.5 oz/ton silver and .05 oz/ton gold exists at Rico. However, Anaconda's early investigations pointed toward a molybdenum target and strong indications of a major molybdenum-tungsten ore body were intersected in drill hole C-25 in November 1979. Results of this hole show a 2,000-foot altered and chemically anomalous (Mo, W, F, and Cu) zone that shares strong similarities with the fringe mineralization adjacent to major molybdenum deposits such as Henderson, Colorado. An ore-grade intercept has not been achieved; drilling is in progress. Drilling results and surface indications indicate a high chance for discovery of a 200 million ton deposit of .25% molybdenum and .04% tungsten. Evaluation of this target under the recent offer by Crystal indicates a DCF ROR of 22%, and an expected present worth of $130 million. The present worth of the project would be reduced to zero if price decreases by 67%, grade decreases by 40%, operating cost increases by 67% or capital increases by 100%. Purchase of Crystal's assets now will block development of the town as a tourist resort and insure availability of important fee land needed for development of a major mine.

Molybdenum demand is expected to grow at 4.5% compared to historical growth of 5.5%. This growth will require significant new supply over the remainder of the century. Impact of new projects is likely to reduce price from the current level of $9.00 to $7.00/lb. ($1980), the long term trend price used in this evaluation. The demand for tungsten is expected to grow at 4% and current U.S. consumption is 25 million pounds/year; about half is imported. Tungsten is strategic, but the current U.S. stockpile of 16 million pounds is being sold at the rate of 4-12 million pounds/year. The long term price trend for tungsten is $7.00/lb., consistent with today's price of $6.47/lb.

Purchase of the Rico property involves assumption of environmental liabilitites as well as the substantial surface and mineral assets. Tailings stabilization and water treatment costing $15.4 million may be needed to correct the environmental damage left from 100 years of silver mining.

In summary, purchase of the Rico property is recommended now because of the potential for discovery of a major molybdenum deposit and to gain title to town and timber property essential to mining. Purchase of the property now eliminates the possibility that Crystal may select the 7½% royalty option which would decrease the net expected present value by $11 million. Engineering studies in 1980 will seek lower cost alternatives to the environmental problems. If exploration does not find a deposit of interest to Anaconda, the company will have purchased $5 million of surface assets, an estimated $5 million of mineral rights, and $15 million of environmental liabilities. Disposal of the property with some of the environmental problems still attached, could probably be achieved at break even costs via sale to a ski resort development corporation or mining company.

(1) This is based on a uniform 10' depth of material in the settling ponds. The cost can be recalculated as a simple ratio i.e. 5' depth would cost half as much.

cc: R. Krablin
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S. Chavez
A. D. Crane
J. King
R. L. Dent
R. Newell

JUSTIFICATION

AUTHORIZATION FOR COMMITMENT

RICO PROJECT, COLORADO

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Introduction

Anaconda Copper Company requests $20.4 million which includes $5.0 million to purchase Crystal Oil Company's assets located in the Rico district in southwestern Colorado, and $15.4 million to cover the environmental liabilities associated with this molybdenum prospect. Environmental curative work is necessary at the project and $15.4 million is requested to begin engineering studies in 1980 and to complete the curative work by 1987. An Exploration Project Authorization of $2.5 million will be required to complete the discovery and confirmation phases by the end of 1982.

The Rico project is in the second year of a three year option-to-purchase agreement on 3040 acres, the surface value of which is appraised at $1 million. The option price is $5 million or $2 million with 7½% royalty at seller's choice. Crystal Oil Company offers to sell this property to us for $5.0 million and includes an additional 1090 acres of timber tracts, 370 acres of town lots, and other important assets, if we buy now. The appraised value of the current offer is $5 million, which is $4 million more than 1981 option.

Anaconda has (1) strong evidence for a stockwork molybdenum-tungsten deposit, (2) a drill-indicated, copper-silver reserve, (3) a suggestion of geothermal resource, and (4) additional targets for tungsten and silver resources at Rico.

Anaconda's Rico project, located in Dolores County, Colorado, began in 1978 with geologic evaluation of the copper-silver skarn orebody discovered a few years before (Figures 1 & 1A). The possibility that a major stockwork molybdenum target exists on the property was realized in the early stages, and the exploration program was reoriented toward the more valuable target. Exploration drilling began in May, 1979. Two holes have been completed, one was lost and three are in progress (Figure 2 and Appendix 1 for detail).

Anaconda has invested about $1,000,000 in exploration and land costs at Rico from June, 1978 through May. The 1980 Rico exploration budget is $333,000 and at the current exploration rate, it will be exhausted by mid-June.

Geologic Justification

The results of drill hole C-25, completed in November, 1979, suggest that a stockwork molybdenum deposit lies within a 2500-foot radius of this hole (Figures 2 & 3). Hydrothermal alteration and mineralization increase in intensity with depth from unaltered and unmineralized sediments at the surface to totally altered and strongly mineralized hornfels and skarns at depth. Hydrothermal alteration changes in style from weak propylitic to intense quartz-sericite (or actinolite-diopside, depending on original rock chemistry) over a distance of approximately 500 feet (1000 to 1500 foot depth). Quartz veining with sulfide mineralization changes dramatically with depth. The vein intensity increases by a factor of 500 by a depth of 2,000 feet. Veining is complex and shows multiple crosscutting relationships. Figure 4 summarizes geochemical gradients of hole C-25 that indicate a major molybdenum deposit lies adjacent to the drill hole.

These strong geochemical gradients, the intense quartz veining, and the pervasive hydrothermal alteration and metasomatic hornfelsing are very similar to anomalies found adjacent to the Henderson, Mt. Emmons, Questa, and Nevada Molybdenum deposits. The molybdenum potential at Rico and Calico Peak is the focus of a recent article by Naeser, et al; (Economic Geology, Volume 75, 1980). The probability of discovery of an economic molybdenum body is very high. The dimensions of the molybdenum target and other targets are listed in Table 1.

Table 1 - Target Size and Grade
Rico, Colorado

Target	Size in M tons	Grade
molybdenum-tungsten stockwork	200	0.25% Mo .04 W
copper-silver skarns*	30	1.50% Cu 2 oz Ag
tungsten-molybdenum skarns*	15	0.3% W .01% Mo

*(See Figure 3 & 5 and Appendix 1)

RCT 000017092

TABLE 2
RICO ASSETS
($ millions)

SURFACE ESTATE	ACRES	APPRAISED VALUE	BULK SALE VALUE	80	81
Town Properties					
Lots (300)	20*		1.5	x	
Annexed Claims (26)	250*	3.4		x	
Tracts (20)	100*			x	
Rico District					
Patented (222)	1690	2.3	1.05	x	x
Unpatented (214)	1351	nil		x	x
Timber Tracts (5)	1087	-	1.2	x	
Mill Salvage (2)	-	8.1	1.0	x	
Telephone Company	-	.05		x	
Water Rights $22.2\ ft^3/sec$	-	.1		x	

	Acres		Value
Summary	1980	4500	$4,800,000
	1981	3040	$1,000,000

*Estimated 5/1980

Surface Assets and Liabilities

Crystal Oil is currently offering to sell 2497 acres of patented land, 1351 acres of unpatented mining claims, 369 acres of town tracts (mineral rights only), and 280 acres of timber land (without mineral rights). The bulk sale market value of these surface, mineral, and timber lands is $3.8 million. Other assets included with the current sale are mill buildings, mining equipment, and water rights. The present value of these assets is appraised at $1.2 million. The total appraised market value for the assets included in the 1980 offer is $5 million, see Appendix II for detail.

The existing purchase option agreement between Crystal Oil and Anaconda contains significantly fewer assets, and as shown in Table 2, the value of the assets defined in this agreement is $4 million lower than the current offer.

Environmental liabilities associated with the Rico property were evaluated by Camp Dresser and McKee, Inc. (CDM) in 1979. Their report on the liabilities is summarized and evaluated in memoranda in Appendix III. CDM concludes that $16 million of curative work is needed to remove the environmental liabilities and the HS & E Department concurs with the CDM conclusions. DME contends the cost of this work will likely be substantially less with focused innovative solutions to the problems. The three areas of major concern are:

1) the tailings ponds which lie near the Dolores River

2) the zinc-rich water that drains from the St. Louis tunnel into these ponds

3) the tailings ponds located adjacent to Silver Creek near the Argentine Shaft.

The probability weighted cost of all environmental solutions is $15.4 million. Environmental work in 1980 is budgeted in this AFC. Additional funds from salvage operations may also become available during the first few years for additional environmental repair work.

An engineering study of the potential value of mining the numerous old dumps at Rico indicates that a precious metal heap-leach operation could produce a present worth of $3.6 million by recovering silver and gold. See Appendix IV for detail. The Silver Fork tailings ponds contain about 3/4 oz/ton silver, and the economics of recovering this silver is under study.

Exploration - Development Scenario

The uncertainty in the probability of occurrence of molybdenum, copper-silver, or tungsten targets on the property will be reduced to 10% or less near the end of 1985 by continuing Anaconda's current exploration pace ($350,000/yr.). If the exploration rate is advanced

to the optimum ($1,000,000/yr.), this uncertainty can be reduced to nil near the end of 1982 on the molybdenum target. The copper-silver-tungsten targets would be only partially evaluated by this time.

Delineation and development drilling, underground sampling, permitting, and land acquisition for the mine plant is estimated to take six years and approximately $30 million. Construction of mine, mill, and infrastructure should be accomplished in four years (1988 to 1991). Using this fast track exploration case, the exploration and development scenario at Rico is shown in Table 3.

Table 3 - Fast Track Exploration and Development Scenario
Rico, Colorado

Phase	$ (Millions)	Time	Cumulative $	Cumulative Time
Discovery	2.5	2 yrs.	2.5	2 yrs.
Confirmation	4.0	6 yrs.	26.5	8 yrs.
Underground Sampling	15.0			
Tailings Land Acq.	3.0			
Permitting	2.0			
Construction	540-900	4 yrs.	565-926.5	12 yrs.

Possible Barriers to Development

In view of the problems that AMAX is having in its molybdenum development at Crested Butte (Mt. Emmons deposit), a few comments are appropriate on possible barriers to development of a molybdenum deposit at Rico. Three possible impacting conflicts are identifiable; they are:

1. Incompatibility with local life style
2. Lack of mill and/or tailing sites
3. Prohibitive cost in maintaining environmental integrity.

The winter population at Rico is fifty, most of whom work. Businesses consist of one bar-restaurant, two gas stations, one liquor store, and one small seasonal motel. Abundant snow is present in most winters; however, Crystal Oil owns the only fee land that could turn into a ski resort. Arts and crafts stores and dilettante activities are absent. Rico is located on Colorado State Highway 145 which leads to Telluride, twenty-nine miles north. Stoner, a one-lift ski resort on private property lies eighteen miles down river, south of Rico (Figure 6). The Stoner ski lift is barely economic at the present time and purchase of the Stoner property for a mill site should be considered in Rico development.

No tailing site exists at Rico sufficient to accomodate a major (+30,000 TPD) mine. Possible locations on private land are present on the West Fork of the Dolores River and on the flat mesas above Stoner (Figure 6). Mill and tailings would be accessed through 7 miles of tunnel and 4 miles of road to the West Fork location. Alternatively, tailings would be slurried 18 miles to the Stoner site from a mill on fee property at Rico. The latter alternative is used in the economic analysis.

The Rico project is enclosed by the San Juan National Forest. The proposed Mt. Wilson Wilderness area lies about 10 miles north of Rico. All other Forest Service lands within a 20 mile radius of Rico have a multiple use classification (Figure 7). The Dolores River canyon is scenic; however, the river below Rico is over 90% enclosed by private land and public access is somewhat restricted. Above the town of Rico, the Dolores River is within Forest Service control and supports high quality public sport fishing. The Dolores River in the Rico area is not proposed for designation as a Wild and Scenic Rriver; however, some 40 miles down river from Rico, the Dolores River from the area near Dove Creek to Gateway is being considered for designation as a Wild and Scenic River (S2342, see Appendix III). The West Fork of the Dolores River above its confluence with the Dolores River is being considered for designation as a Wild and Scenic river.

Most of the difficulty in acquiring permits for a mining operation at Rico would center on preserving the integrity of air and water quality. Tunnel diversion of the Dolores River might be required if the molybdenum deposit occurs within 3,000 feet of the river. Drill hole C-26 suggests the molybdenum deposit must lie more than 3,000 feet east of the river and thus this possible major conflict does not pose a problem. None of the mill and tailing sites described are close to Wilderness or other restricted land classifications (Figure 7).

In summary, no "fatal flaw" can be identified in the Rico project. The area appears to be far more favorably located for development than AMAX's proposed Mt. Emmons operation at Crested Butte.

Market Outlooks

Molybdenum - Molybdenum demand is expected to grow at between 4.0% and 4.5% per annum for the remainder of the century. This growth is below historical levels (5.5-6.0%) and is consistant with ARCO's Interated Scenario.

Molybdenum's primary use is as an additive agent to steel, imparting strength, toughness, hardenability and resistance to corrosion and wear. It is used in both alloy and stainless steels and other specialty applications. Potential substitutes for molybdenum include columbium, chromium, nickel, and tungsten, but no significant substitution is expected over the forecast period.

The strong growth in molybdenum demand will require significant new supply over the remainder of the century. The recent shortage of molybdenum has spurred the development of known orebodies, but many of these are plagued with environmental problems, long lead times, and are not expected to come on-stream until the mid to late 1980's.

The United States is the primary world producer of molybdenum, with one company producing over 40% of the world supply from the Henderson and Climax mines. Another 45% of supply comes as by-product from copper mining. This supply is expected to increase in proportion to expanded copper production.

New major, molybdenum mines expected to come on stream during the next decade include Mt. Tolman (Amax), Mt. Emmons, (Amax), Thompson Creek (Cyprus), Goat Hill (Moly Corp), and Moly Project (Anaconda), all of which are located within the United States.

The impact of these projects and others is likely to reduce the price of molybdenum from todays levels. Currently, the producer price for molybdenum (Climax Oxide) is $9.00/lb. and the spot price is approximately $11.00/lb. The long term trend price used in this evaluation of $8.00/lb. (1980 dollars) is more consistant with the price required to bring on new primary production in the future.

Tungsten - The demand for tungsten is expected to grow at between 3.8% to 4.0% per annum over the long term. Current United States consumption is approximately 25 million lbs./yr. Tungsten, like molybdenum, is primarily used as a steel additive with the principal consuming industries being: metal working and construction machinery (77%), transportation (10%), and electrical and lighting (10%). Tungsten's dominent characteristics are its extreme hardness and oxidation resistance at elevated temperatures.

The United States imports between 40 and 50% of its tungsten needs. Domestic reserves of tungsten are inferior to that of the rest of the world in both quality and quantity. The U.S. has 10% of identified world reserves while mainland China is estimated to have over 55%. U.S. production could increase by over 20% in the early 1980's if a new project in Nevada comes on as planned. Major world production sources are the U.S. (7%), Australia (8%), Bolivia (7%), Canada (6%), Mexico (6%), and central economics (43%).

Tungsten has long been considered a strategic resource under the Defense Production Act of 1951 and the GSA has built up substantial stockpiles. The current GSA stockpile of 60 million lbs. is over 6 times its stated goal and the government is expected to continue selling tungsten at a 4-12 million lbs./yr. rate. This represents 3-8% of annual world demand. This market overhang will prevent strong upward price movements in the medium term. Once the inventory is depleted, prices may exhibit upward pressures.

The estimated long term price trend of $7.00/lb. contained tungsten is consistent with todays price of $6.50/lb. The tungsten market traditionally has been very cyclical and can be expected to remain so. Previous attempts at price stabilization have been unsuccessful.

Economic Justification

The expected value of purchasing Crystal Oil's assets at Rico was calculated and compared to exercising our existing option to purchase or drop the property in 1981. The expected values (EV) are summarized below and illustrated on decision trees shown on Figures 8 and 9.

	Expected Value $ Million
Purchase RAMCO assets for $5 million	130
Exercise contract on 11/31/81 for $5.0 million (or $2 million with 7½% NPI)	125

If the errors in estimation of costs, prices, timing, and probabilities are mutually compensating, then purchasing RAMCO's assets for $5 million now has a $5 million greater net expected value than the 1981 option.

The difference between these expected values is 5%. If Crystal selects the net profits option, the expected value of the current purchase is much greater than 5%. That is, the property should be purchased now rather than letting the option run its course.

The basis for the economic evaluation is the expected value of the molybdenum target as simulated by Monte Carlo techniques. The 'most likely' target is 200 million tons of 0.25% molybdenum. Table 4 summarizes the base case parameters and ranges as defined by the Geology, Planning, and Engineering Departments. Basic assumption and more detailed cost/revenue calculations are presented in Appendix V.

The sensitivity of the expected present worth of the 1980 purchase option to various parameter changes is detailed in Table 5. The effect of parameter value increases or decreases on present worth is relatively equal in most cases. Present worth is most effected by changes in molybdenum price and grade, and operating costs. In contrast, total capital investment, reserves, and yearly production rate would have to change by more than 100% to cause the present worth to either drop below zero or double in value.

Three major concerns in the analysis are identified as:

1) The royalty selection option in 1981

2) The environmental rehabilitation costs

3) The value of assets is $4 million larger in the 1980 "offer".

The economic analysis indicates that the difference in expected values between the 1980 present purchase offer versus the 1981 purchase option results principally from the effect of the royalty selection available in the 1981 purchase option. The impact of the 7½% NPI royalty can be observed most clearly at the point on each of the three decision limbs (Figures 8 and 9) early in 1982. Anaconda's expected value for the 1981 purchase no-royalty case, is $165 million; for the 1981 purchase 7½% royalty case, is $155 million; and for the 1980 purchase case is $170 million. The discounting of these values from 1982 to 1980 reduces the expected values to $125 million, $120 million, and $130 million, respectively. The consequence of the royalty also can be observed at the right end of the decision tree in Figure 9.

It is important to note that a probability of 0.1 is assigned to the Crystal Oil selection of the $2 million plus 7½% NPI option and it is assumed that 75% of the molybdenum orebody is situated on Crystal's land. If the assigned probability of the Crystal NPI selection is too low or if the orebody lies entirely on Crystal's land, the effect will be to change the net expected values, increasing the attractiveness of the 1980 offer.

The second area of concern is the $15.4 million cost estimate for environmental rehabilitation. Although this cost was incorporated into both purchase options in an identical manner and does not significantly detract from the overall economics of the project, the liability represents the most significant exposure should the project fail to meet molybdenum target expectations. If Anaconda were to purchase now or in 1981 based on only "near discovery data", the exposure would be $15.4 million, with a continuing caretaking cost of $200,000 per year until the property was disposed of via sale to either a real estate concern or to a competitor mineral development company. Further detail is included in Appendix V.

The third area of concern is that the value of the assets is $4 million larger in the 1980 offer than in the existing 1978 agreement. Of the $4 million difference, $2.85 million is for land that Anaconda may have to purchase if exploration is a success. The present value of this land is $11.6 million (1980 dollars) assuming a real growth of value at 3% and a purchase premium of 300% in 1984. Intangible problems associated with not purchasing now arise from Crystal's current sale of lots to transient citizens who might create a local resistence to development.

Domestic Metals Exploration Recommendation

1. Buy Crystal Oil's assets and liabilities in the Rico district for $5.0 million, complete discovery exploration with additional expenditures of $750,000 in 1980, $1.2 million in 1981, and $550,000 in 1982; and begin environmental repair studies in 1980.

Other Options Not Recommended

1. Continue exploration at an accelerated rate, exercise either a $5 million or $2 million plus 7½% NPI option in November, 1981, and proceed to development as warranted. The November, 1981 decision will be made with insufficient knowledge at current exploration rate. If the 1981 option is exercised, assets not included in the 1980 offer will be purchased separately ($11.6 million, PW_{15} 1980) should mine development proceed at some future date.

2. Farm-out Rico property now to Molycorp, AMAX, or Getty Oil.

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TABLE 4
RANGES FOR RICO VARIABLES
1980 Dollars

VARIABLE	BASE	RANGE
Grade:	0.25% Mo	0.15% to 0.40% Mo
Price:	$8.00/lb.	± 25%
Operating Costs:	$15.85/T Ore	$14.30/T ore to $19.80/T Ore
Reserves:	200 million tons	0 to 400 million tons
Total Capital:		
@ 100 m̄ tons to 199 m̄ tons		$430 m̄ to $720 m̄
@ 200 m̄ tons to 299 m̄ tons	$575 m̄	$540 m̄ to $900 m̄
@ 300 m̄ tons +		$810 m̄ to $1350 m̄
Production:		
@ $430 m̄		4.2 m̄Tpy to 5.78 m̄Tpy
@ $600 m̄	10.5 m̄Tpy	8.4 m̄Tpy to 11.55 m̄Tpy
@ 1350 m̄		11.55 m̄Tpy to 15.23 m̄Tpy

Note: Indentation of variable denotes a dependency relatioship.

TABLE 5

SENSITIVITY ANALYSIS

PERCENTAGE CHANGE OF VARIABLE

VS.

PRESENT WORTH IN PERCENT

Variable	-25%	-10%	--	+10%	+25%
Molybdenum Price	0.31	0.73	PW	1.25	1.62
Molybdenum Grade	0.39	0.76	PW	1.23	1.56
Total Operating Cost	1.29	1.12	PW	0.87	0.64
Total Capital	1.16	1.07	PW	0.93	0.83
Reserves	0.77	0.92	PW	1.07	1.16
Production Rate	0.73	0.90	PW	1.08	1.19

PERCENTAGE CHANGE OF VARIABLE

VS.

PRESENT WORTH IN DOLLARS (millions)

Variable	-25%	-10%	--	+10%	+25%
Molybdenum Price	41	96	130	164	212
Molybdenum Grade	51	100	130	161	204
Total Operating Cost	169	147	130	114	84
Total Capital	152	140	130	122	109
Reserves	101	121	130	140	152
Production Rate	96	118	130	142	156

APPENDIX III

Environmental Liabilities at Rico

ANACONDA Copper

RECEIVED
APR 18 1980
SW DISTRICT

April 17, 1980

A. Barber

R. Krablin

Subject: Clarification of RICO Environmental Liabilities

We have reviewed our recommendations on RICO environmental liabilities and perceive two possible misconceptions. The first is contained in the Internal Correspondence dated March 20, 1980 from J. Whyte. He discussed the probable timing of environmental liability correction and the associated costs. It should be made clear that costs will occur only if the RAMCO purchase is completed.

Secondly, in the April 14, 1980 Internal Correspondence of R. Krablin to A. Barber, partial removal of water clean-up requirements by sealing the St. Louis tunnel and Blaine workings is discussed. In statement No. 5 on the second page, the occurrence of "probable other discharge sources" is meant to mean that no detailed studies of stopping the water flow have been done and therefore such an alternative may be possible, but cannot be assured.

Richard Krablin

RK/cg

cc: J. Anderson
R. Dent
J. King
W. Leake
I. Nelson
R. Newell
J. Whyte
J. Wilson

RCT 000017143

ANACONDA Copper Company Internal Correspondence

Date: April 14, 1980

To: A. Barber

From: R. Krablin

Subject: Rico Environmental Considerations

Much has been written about the environmental liabilities of the Rico district and the implications to Anaconda of purchase of the RAMCO properties. HS&E files on Rico are extensive, going back to mid-1978. With the aid of our recent site visit, I have reassessed the concerns of the HS&E Department and have considered the best ways to minimize environmental impact of whatever properties and facilities Anaconda may buy and/or develop. A summary of the alternatives and our conclusions is provided here. In a separate Internal Correspondence we are commenting on your Draft Authorization for Commitment Justification.

My basic conclusion is that the environmental liabilities at RICO have not been overstated by the CDM report and the recommended control actions will require about $16,000,000 in costs over the initial years of Anaconda ownership.

The Rico existing environmental liabilities are shown on the attached plan sketch and can be summarized as follows:

Map Identification No.	Description	Environmental Liability
1	Blaine Workings	Discharges polluted water to St. Louis Tunnel
2	St. Louis Tunnel Adit	Discharges polluted water to Settling Ponds
3	Cyanide Heap Leach Area	Leaches polluted water to Dolores River
4	Settling Ponds	Seep and discharge polluted water to Dolores River
5	Lead/Zinc Tailings Ponds	Seep polluted water to Silver Creek
6	Settling Pond Dikes	Dolores River scours dike - seepage to Dolores River
7	Lead/Zinc Tailings Pond Dikes	Silver Creek scours dike

Description	Environmental Liability
Drill holes	Discharge water to settling Pond and Dolores River

existing federal Clean Water Act (NPDES) permit
Louis Adit and pond discharges to the Dolores
addition, the State of Colorado has mentioned
ssure on RAMCO to clean-up the discharge and
d seepage. Anaconda will assume responsibility
liabilities listed above, if we purchase.
environmental challenges greatly increase if we
ue to environmental limitations of the terrain.

afety & Environment conclusions and recommendations

Recognize that environmental liabilities are just that - liabilities - and must be resolved before development or other property transfer can be accomplished.

Consider the costs of environmental liability correction as necessary and unavoidable, the manipulation of which can only postpone expenses and increase the risk of major developmental delays.

3. Use the most reasonable, available technology solutions for planning. These are specified in the CDM report. Any substantial departure from the CDM proposed plans represents high risk alternatives not supported by similar studies.

4. While a water treatment plant must necessarily be included as a cost at the present time, every effort should be made to conduct further studies to find a way to avoid any such requirement for permanent attention.

5. Unfortunately at this time, plugging the St. Louis tunnel (No. 2) and the Blaine workings (No.) does not appear feasible, due to probable other discharge sources.

6. Cap the existing, old wells (No. 8) immediately if Anaconda were to gain control, even though the water they produce is not seriously degrading the Dolores River, except cosmetically.

... is the goal, obtain as much property ... avoid conflicts with new owners.

... increasing the intensity of explorati... to ... decision point, rather than commit now to ... any environmental liability.

... y consider any plan which is based on possible ... land or pieces of the RAMCO property at a later ... Environmental conditions may limit sale possibilities ... greatly complicate any Anaconda pollution controls ... (or as a water treatment plant) on remaining ownership.

10. Recognize that the existing NPDES permit expires at the end of 1980. A new owner may be assessed tighter limits. The old ones are not now being met.

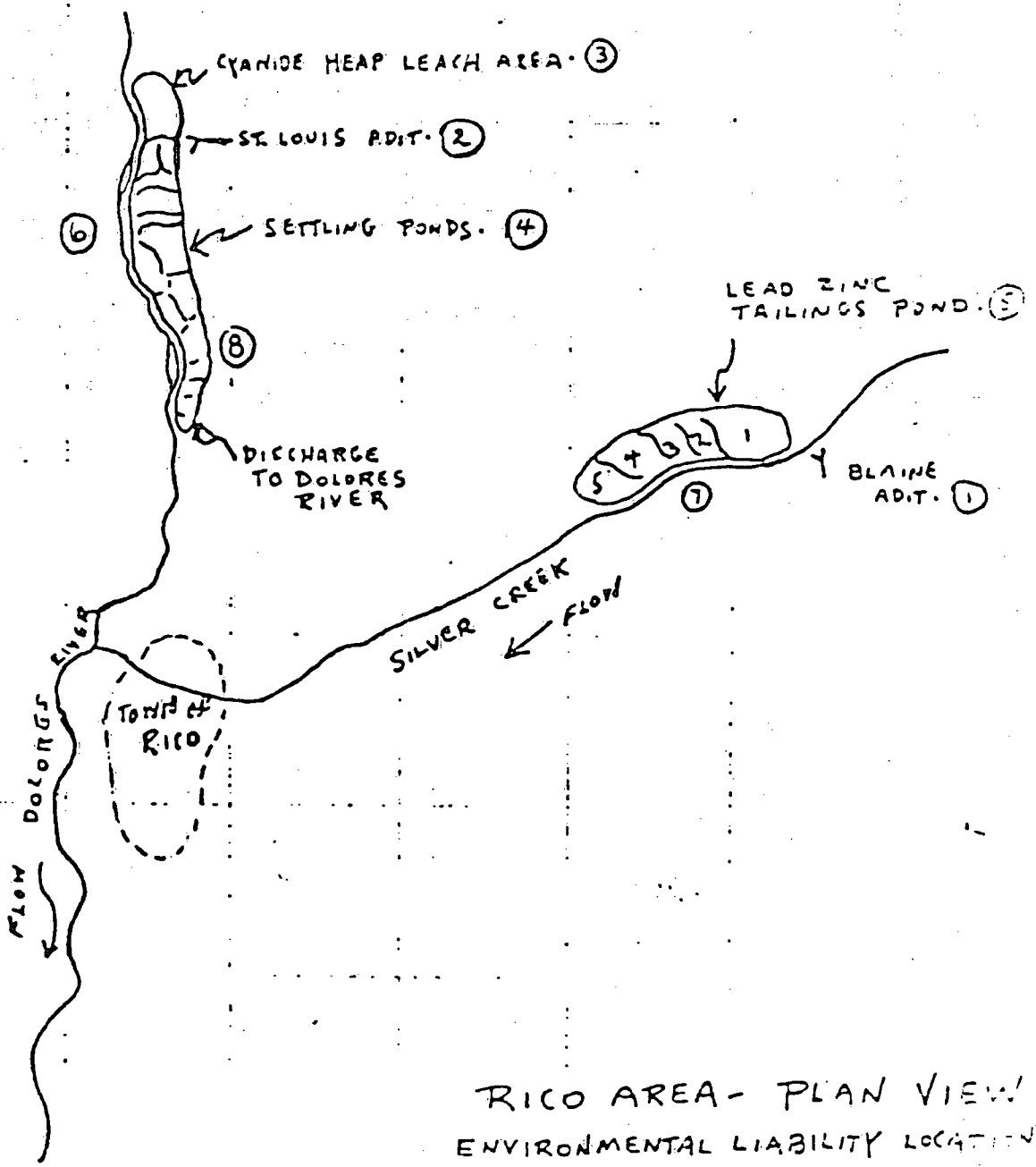
11. Under RCRA, as of the end of this month, active hazardous waste facilities (if we disturb, add to or clean-up the dumps, ponds, or effluents they are active) will be subject to tough regulations, which will increase the costs of control.

12. Take into account the conclusions given by I. D. Nelson in his Internal Correspondence to J. F. Anderson, August 21, 1979. As he noted, permits for development (including partial development by Anaconda or other interests) will be difficult enough to obtain that same increase in project return must exist to compensate for potential delays. No ownership of development lands for a mill, tailings pond, a large townsite, or rights-of-way is included in the RAMCO deal. Can the target, if discovered, be developed?

Richard Krablin

RK/cg

cc: J. Anderson
R. Dent
J. King
W. Leake
I. Nelson
R. Newell
J. Whyte
J. Wilson



RICO AREA - PLAN VIEW
ENVIRONMENTAL LIABILITY LOCATIONS

SCALE 1" = 0.38 MILES

ANACONDA Corr: Correspondence

DEC'D

MAR 11 1980

J. R. KING

Date: March 10, 1980

To: John King

From: Richard Krablin

Subject: ENVIRONMENTAL LIABILITY IN PURCHASING RICO

HS&E has reexamined the Rico environmental problems to determine if there are alternates to the CDM Report and its recommended $16,000,000 solution. As described in the attached IC from J. Whyte, we believe detailed engineering may improve the cost, but substantially cheaper alternatives are not available. Regulatory pressures (e.g. RCRA, TSCA) existing and developing will not today allow other solutions we might have readily undertaken in the past. Permanent liability is a fact of life; permanent solutions must be found.

We will be pleased to further optimize the environmental protection plan and, of course, to evaluate any other alternative anyone may suggest.

Richard Krablin (c.w.)
Richard Krablin

RK/cg

cc: J. Anderson
A. Barber
R. Dent
F. Laird
I. Nelson
R. Newell
J. Rupp
J. Whyte
J. Wilson ✓

cc

25, 1980

C. Wilson

Whyte

Operating & Maintenance Costs

al cost involved with correcting existing
tory environmental conditions at Rico is
tely $16,000,000. This was detailed in my
October 9, 1979.

d add that operating and maintenance costs
waste treatment system continue ad infinitum
estimated to be $200,000 per year. (1979
. I suspect that this figure may be some-
due to the fact that the dollar impact of
ng the system under severe winter conditions
ficult to assess.

R. Krablin
F. J. Laird, Jr.
S. Chavez
G. Rupp
A. D. Crane
J. King
R. L. Dent
R. Newell

ANACONDA Copper Company Interna[illegible]ence

Date: October 9, 1979

To: John C. Wilson

From: Jack Whyte

Subject: Rico Environmental Liability Assessment

Copies of the subject report were delivered to you, John King and other interested individuals on October 8, 1979. A summarization of the costs that would be involved in solving existing environmental problems follows:

1.	Silver Creek - Channel Improvements	$ 777,000
2.	Silver Creek - Regrading & Reclamation of Tailings Pond	700,000
3.	Silver Creek - Runoff Diversion Ditch	150,000
4.	Dolores River - Bank Protection	719,000
5.	Dolores River - Regrading & Reclamation Dump Areas	150,000
6.	St. Louis Tunnel Collection System	100,000
7.	Silver Creek Seepage Collection System	300,000
8.	Cyanide Leach System	70,000
9.	Water Treatment Plant	2,500,000
10.	Dolores River Pond Fixation - Carborundum Co. Alternative	6,300,000 (1)
11.	Access Road - Regrading etc.	30,000
		$11,777,000
	25% For Engineering and Contingencies	3,000,000
		$14,777,000

Tony Crane visited the site and will report his findings relative to demolition work and reclamation of the plant areas. His preliminary estimate is $1,000,000 to $1,250,000.

If we can be of any further assistance, please advise.

RCT 000017150

IN THE MATTER OF STATE OF COLORADO PROCEEDING UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, 42 U.S.C. 9601 ET SEQ.

NOTICE AND CLAIM AGAINST ANACONDA MINERALS COMPANY AND ATLANTIC RICHFIELD COMPANY FOR COSTS AND DAMAGES PURSUANT TO 42 U.S.C. 9612

TO: Anaconda Minerals Company
Atlantic Richfield Company

The State of Colorado, the Department of Health and the Department of Natural Resources ("the state"), acting on behalf of the People of Colorado as trustee of the natural resources within the state, for its notice and claim against the above-named party, states as follows:

1. This claim is made pursuant to section 112 of the Comprehensive Environmental Response, Compensation and Liability Act ("the Act") (42 U.S.C. 9612).

2. Based upon the state's information and belief, you own or operate a facility as defined at 42 U.S.C. 9601(9); owned or operated a facility at the time hazardous substances were disposed of; contracted, agreed, or otherwise arranged for disposal of hazardous substances at the facility; or arranged for the transport of said facility of hazardous substances owned or possessed by you, or accepted hazardous substances for transport to said facility, said facility being the Rico Argentine Mine, Mill and Tailings File, located in Rico, Colorado. Such hazardous substances include, but are not limited to, cadmium, copper, lead, and zinc.

3. There have been releases of hazardous substances from said facility into the following natural resource(s) of the state, to wit: soils and ground water in and around the facility, and the Dolores River.

4. The above-mentioned releases of hazardous substances have caused the injury to, destruction of, or loss of said natural resource(s) resulting in costs and damages to the state up to the statutory maximum of $50 million per release, subject to adjustment based on federal regulations and/or assessment of

natural resource damage by federal officials.

5. The releases and damages did not occur wholly before enactment of the Act.

6. Therefore, pursuant to sections 107, 111 and 112 of the Act (42 U.S.C. §9607, 9611 and 9612), you and your agents, servants, and employees are liable for damages for injury to, destruction of, or loss of the natural resource(s) referred to in paragraphs 3 and 4.

7. The State hereby makes its claim pursuant to section 112 of the Act (42 U.S.C. §9612) and demands that the State be compensated for costs and damages up to the statutory maximum of $50 million per release, subject to adjustment based on federal regulations and/or assessment of natural resource damage by federal officials.

DATED this 9 day of December, 1983.

I, Thomas F. Looby, being duly sworn, hereby state that I have read the foregoing document and believe the contents to be true to the best of my knowledge.

DATED this 27 day of December, 1983.

Thomas P. Looby

Subscribed and sworn to before me in the County of Denver, State of Colorado, this 9th day of December 1983.

NOTARY PUBLIC
4210 E 11th Ave
Denver, Co 80220

My commission expires:
My Commission Expires Oct. 5, 1985

I, _____, being duly sworn hereby state that I have read the foregoing document and believe the contents to be true to the best of my knowledge.

DATED this 9 day of December, 1993.

_____

Subscribed and sworn to before me in the county of Denver, State of Colorado, this 9 day of December 1993.

_____
NOTARY PUBLIC

My commission expires:
February 15, 1997

AO Alpha No. HL SH HVWP
AO File No. D:\Rd305195/2CA

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ecology and environment, inc.
4105 EAST FLORIDA AVENUE, SUITE 360, DENVER, COLORADO 80222, TEL. 303-757-4884
International Specialists in the Environmental Sciences

September 17, 1984

Mr. Robert L. Dent
Anaconda Minerals Company
555 Seventeenth Street
Denver, CO 80202

Subject: EPA approved Site Visit to Rico-Argentine Mine, Colorado.

Dear Mr. Dent:

Currently Ecology and Environment, Inc. Field Investigation Team (FIT) is under contract to the U.S. Environmental Protection Agency (EPA) to investigate sites which may qualify under CERCLA for remedial investigation. As FIT Project Officer, I have the responsibility to produce a Sampling Plan for the Rico-Argentine Mine. From the information gathered thus far, we understand that this site is a part of the mining complex known as the Pioneer Mining District. The authorization for this Sampling Plan is issued under Technical Direction Document (TDD) R8-8408-17 by Thomas Staible, EPA Project Officer. (see attachment) Our assignment is to assess the possible impact that the mines in the district may have on the Delores River. In particular, EPA has requested that we focus our initial investigations on the Rico-Argentine mining site. To develop background information about the site, we are requesting the following information from your office:

a) A photocopy of the site or area map that defines the property boundary of Anaconda Minerals Company at the Rico-Argentine Mine.

b) References to site aerial photos. If such photos exist, Ecology and Environment would take the responsibility for reproduction, providing Anaconda Minerals Company does not consider such photographs confidential.

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c) Any general geology or hydrology studies of this area or hydrology studies of this area or references to this information that could be useful in preparing an environmental assessment.

d) Written permission for Ecology and Environment, Inc. to enter this property for a site visit.

We thank you for your assistance in providing any information about the site. We will be in contact with Anaconda Minerals Company to discuss further the possibility of performing a site inspection and our schedule for doing so.

In the meantime, if you have any questions regarding this request please direct them to either, Michael Glaze or me at Ecology and Environment (303-757-4984).

Sincerely,

Margaret J. Babits

MJB/pt
Attachment
cc: Thomas Staible, U.S. EPA, Denver with attachment